

EMPLOYMENT STANDARDS ▶ **FACT SHEET**PubNum  
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# Temporary Layoff

## What is the *Employment Standards Act*?

The *Employment Standards Act* is the law that contains Ontario's basic rules about employing people and working. Both employees and employers have rights and responsibilities under the Act.

## Does the Act cover all employees in Ontario?

Most employees in Ontario are covered by this provincial law. But the Act does not apply to an employee or employer in an industry under federal labour jurisdiction. The *Canada Labour Code* applies instead. The Code covers employees in such industries as:

- post offices
- banks
- railways
- radio stations
- airlines
- television stations

For information about the *Canada Labour Code* contact the nearest Human Resources Development Canada - Labour Programs office. The address and telephone number are in the blue pages of the telephone book under "Government of Canada".

## What is a temporary layoff?

A temporary layoff lets an employer suspend, cut back or stop an employee's employment without permanently ending or terminating the employment. For example, an employer may lay off employees when there is not enough work to do.

If a recall to work date is not given to the employee at the time of layoff, regardless of how long the layoff actually turns out to be, the layoff does not qualify as "temporary".

A temporary layoff can last either:

- **13 weeks in any period of 20 consecutive weeks when:**
  - employers do NOT pay their share of the employee's benefits (such as medical or drug insurance) or pay their contributions to an employee pension plan if such a plan is available,
  - and
  - the employee is not eligible to receive supplementary unemployment benefits from the employer;





**OR**

- **35 weeks in any period of 52 consecutive weeks when:**
    - employers pay their share of the employee's benefits (such as medical or drug insurance) or pay the employer's share of contributions to the employee pension plan if such a plan is available,
- or**
- the employee is eligible for or is receiving supplementary unemployment benefits.

### **Does an employee get notice of a layoff?**

An employer does not have to give notice or other advance warning if the layoff is temporary. Also, an employer does not have to tell an employee why he or she is being laid off.

If the employer intends to bring the employee back to work, the employer is required to give the employee a recall to work date. If an employer does not give the employee a recall to work date, the employee is considered terminated and termination pay will be due and owing to the employee seven days after the employee's last day of work.

### **Does seniority affect layoffs?**

Seniority may affect layoffs only if there is a collective agreement (union contract) at the workplace. The Act does not require employers to consider length of service when laying off employees.

Employee questions about seniority should be directed to the union or bargaining agents.

### **Can an employer keep an employee on layoff indefinitely?**

Usually, no. The Act says that after certain periods of layoff, an employer may have to pay an employee termination pay, severance pay or both.

If an employee has a collective agreement (union contract) at his or her workplace or an employment contract with his or her employer, it may have rules about how long a layoff may last.

### **When does an employee get termination pay?**

If an employer advises an employee that he or she is laid off and does not give the employee a recall to work date, the employee is considered to have been terminated and termination pay is due and owing to the employee seven days after the employee's last day of work.

If the employer gives the employee a recall to work date and later the employer finds that the original recall date must be extended, there may be no termination as long as the layoff remains temporary, e.g., the employee is called back to work before the 13- or 35-week periods (as described above) are over.

For the purposes of establishing an employee's right to termination pay, a week of layoff is one when an employee gets less than *one half* ( $\frac{1}{2}$ ) of the wages earned in a regular work week with no overtime.

A week does not count as layoff if the employee was:

- not able to work;
- not available for work;
- under suspension for a reason;
- without work because of a strike or lockout.



## How much termination pay does an employee get?

It depends on how long an employee worked for an employer, ending with the date the layoff began. The amount can be figured out using the chart below.

<u>How long with employer</u>	<u>Termination pay</u>
• Less than 3 months:	0
• 3 months or more, but under 1 year:	1 week's wages
• 1 year or more, but under 3 years:	2 weeks' wages
• 3 years or more, but under 4 years:	3 weeks' wages
• 4 years or more, but under 5 years:	4 weeks' wages
• 5 years or more, but under 6 years:	5 weeks' wages
• 6 years or more, but under 7 years:	6 weeks' wages
• 7 years or more, but under 8 years:	7 weeks' wages
• 8 years or more:	8 weeks' wages

Special rules apply in cases of "mass terminations". This is when 50 or more employees receive notice of termination at one workplace within any four weeks or less. (If these employees are employed longer than three months, they are eligible for eight weeks' notice of termination or termination pay.)

Termination pay must be the same as the employee's regular pay without overtime.

It is equal to the wages the employee would be paid during the period of notice he or she is entitled to receive. The employee's benefits must be continued for the same period.

The Act says termination pay should be paid no later than seven (7) days after termination.

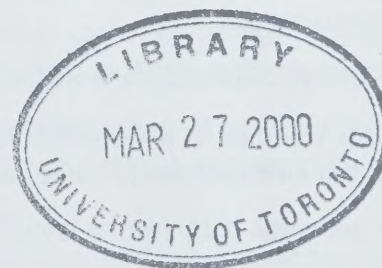
## When does an employee qualify for severance pay?

An employee may qualify for severance pay after **35 weeks of layoff in any period of 52 consecutive weeks**.

To establish an employee's right to severance pay, a week of layoff is one in which the employee gets less than *one quarter* ( $\frac{1}{4}$ ) of the wages earned in a regular work week that has no overtime.

A week does not count if the employee was:

- not able to work;
- not available for work;
- under suspension for a reason;
- without work because of a strike or lockout.



Under the Act, an employee can get severance pay *only if*:

- he or she has worked five or more years for the employer;
- and*
- the employer is in *one* of the following two groups:
  - has a payroll in Ontario of at least \$2.5 million a year;
- or*
- is no longer going to be carrying on all or part of the business, *and* 50 or more employees will lose their jobs for this reason in any six-month period.

If the above conditions are **not** met, an employee does not qualify for severance pay.



If an employee has been laid off because the employer has closed all of its business *permanently*, he or she may be entitled to severance pay after one week of layoff. Please refer to the "Severance Pay" Fact Sheet or contact the nearest Ministry of Labour office.

### **How much severance does an employee get?**

If an employee qualifies for severance pay, the employer will give the employee a lump sum payment that is equal to one week's regular pay for each year the employee was employed.

The employee also gets credit for full months of employment. For example, if he or she worked for 10½ years, the employer would pay the employee 10½ weeks' regular pay as the severance pay.

A week's "regular pay" is an employee's normal weekly pay. Overtime is *not* included even if an employee regularly works overtime.

There is a limit of 26 weeks' regular pay for severance pay. Even if an employee has worked longer than 26 years, 26 weeks is the most he or she can get under the Act.

### **Are there reasons why an employee might not get termination and severance pay?**

Yes, there are reasons why an employee would not get severance pay, termination pay or both. The most common reasons are listed below:

#### **An employee doesn't get *either* termination pay or severance pay if he or she:**

- was fired for wilful misconduct, disobedience or wilful neglect of duty that is not condoned by the employer;
- was free to decide when he or she wanted to work and could refuse work when offered it;
- has refused reasonable alternative employment with the employer.

#### **An employee doesn't get termination pay if he or she:**

- was hired for a specific period or job that was going to last for 12 months or less and works to the end of the period or job;

*Note:* If an employee's employment ended after working three (3) months or more and the employee did *not finish the full term for which he or she was hired*, the employee is entitled to termination pay.

- was doing construction work on site;
- retires when he or she reaches retirement age as established by employer practice. If an employer allowed an employee to continue working after that age, he or she is entitled to termination pay;
- did not come back from a layoff within a reasonable time when asked by the employer;
- was terminated during or because of a strike or lockout at his or her place of work;
- lost his or her employment because an unexpected event - such as a fire or flood - made it impossible for the employer to keep the employee working;
- has refused work available through a seniority system (this is also called "bumping").

*Note:* "unexpected event" does *not* include bankruptcy or insolvency. If an employer goes out of business suddenly and the employee loses his or her job, the employee should contact the nearest Ministry of Labour office.



### **An employee does not get severance pay if he or she:**

- retires and collects a full pension (not including a CPP pension);
- is terminated during or as the result of a strike or lockout at his or her place of work, and the employer can show that the job the employee did no longer exists because of the economic effects of the strike;
- has been employed to work on a construction site;
- is not able to work due to an illness or injury that is chronic or long-term;
- has refused work available through a seniority system ("bumping").

### **Can an employee apply for Employment Insurance benefits when he or she is laid off?**

If an employee is laid off for a week or longer, the employer must give the employee a Record of Employment.

This is an official Government of Canada form that the employer must fill out. The employee needs it for Employment Insurance (EI) purposes.

Contact Human Resources Development Canada with questions about Employment Insurance, or the Record of Employment.

The telephone number to call is in the blue pages of the telephone directory. Look in the "Government of Canada" section, under "Employment Insurance Inquiries".

*Employment Insurance is not provided through Ontario Ministry of Labour offices.*

### **Can an employee work somewhere else when he or she is laid off?**

Yes, an employee may work somewhere else for another employer during a layoff. This does not mean the employee loses any of his or her rights to termination or severance pay.

### **What if an employee is called back to work from a layoff?**

If an employee is called back while he or she is still on layoff, the employee must decide if he or she is going back.

If the employee decides to go back, he or she must do so within a reasonable period of time. If the employee refuses to return, he or she **may** lose the right to termination pay or severance pay:

- if an employee is *already entitled* to termination pay or severance (after 13 or 35 weeks of layoff) when the employer calls him or her back to work, the employee will not lose the right to the termination or severance pay by refusing to return to work.
- if an employee is *not yet entitled* to termination pay or severance, he or she could lose the rights to termination pay or severance if he or she:
  - refuses to return to work when the employer calls the employee back to his or her old job or to a reasonable alternative job. In this case, the employer does not have to pay the employee either termination pay or severance;
  - refuses to return to work when the employer calls the employee back to a job that is **not** a reasonable alternative, **but** it is offered through a seniority system under a collective agreement. In this case, the employer does not have to pay the employee termination pay. But the employer may still have to pay the employee severance once the layoff has lasted 35 weeks in any period of 52 weeks.



## What are recall rights?

"Recall rights" is a term used in collective agreements (union contracts). It means being called back to work by the employer after being laid off.

*Note:* If an employee has a collective agreement at his or her place of work, the employee should ask the union for details about recall rights.

## Do recall rights affect termination pay?

- **If a layoff has lasted for 35 weeks**, and an employee's benefits were being paid or the employee was eligible to receive supplementary benefits from the Employment Insurance Program (EI), the employee can decide if he or she wants to:

- keep his or her recall rights;

*or*

- take the termination pay and give up recall rights.

An employee can give up recall rights at any time. It is the employee's decision.

If an employee gives up his or her recall rights or if they run out, the Ministry of Labour will pay the employee his or her termination pay from money the employer must send in to the Ministry.

- **If the layoff has lasted for 13 weeks**, and benefits were not paid or the employee was not eligible for supplementary EI, the employee keeps any recall rights he or she may have under his or her collective agreement.

The employee keeps these even though the employer paid the termination pay after 13 weeks of layoff.

## Do recall rights affect severance pay?

If an employee has recall rights and is eligible for severance pay because the layoff has exceeded 35 weeks in 52, he or she has to choose between:

- keeping his or her recall rights;

*or*

- taking the severance pay immediately.

The employee has to decide which he or she will do:

- if the employee decides to take the severance pay immediately, he or she will lose recall rights;
- if the employee decides to keep his or her recall rights, the employer will send the severance pay to the Ministry of Labour. It will be kept in trust for the employee.

## What if an employee is recalled to work?

If an employee is recalled to work after termination or severance has been paid to the Ministry of Labour, the employee can either:

- **accept the recall:** if the employee accepts the recall, the Ministry will return any termination or severance pay it is holding in trust to the employer;
- **refuse the recall:** the employee is still entitled to termination or severance pay which is being held by the Ministry. The Ministry will send it to the employee.

## Where can an employee or employer get more information?

Visit the Ministry of Labour Web site at <http://www.gov.on.ca/lab/es/ese.htm> to see all of the Fact Sheets and "The Employer's Guide to the Employment Standards Act". All of the Fact Sheets can be accessed through the Ministry's fax-on-demand system at (416) 326-6546. Check the blue pages of the local phone book or the Web site at <http://www.gov.on.ca/lab/mol/contacte.htm> for the nearest Ministry of Labour office.

### Fact Sheets available:

- How to File a Claim
- Vacation Pay & Vacation with Pay
- Pregnancy Leave
- Parental Leave
- Public Holidays
- Notice of Termination
- Severance Pay
- Temporary Layoff
- Minimum Wage
- Overtime Pay
- Hours of Work
- Working in Retail
- Homeworkers
- Domestic Workers
- Agricultural Workers

**Please note:** This Fact Sheet is provided for your convenience and information only. It is not a legal document. For further information and precise interpretation, please refer to the *Employment Standards Act* and Regulations.



